

Pro-Justicia.

SENTENCE.

IN THE NAME OF THE QUEEN!

The Temporary Court-martial in Amboina has passed the following sentence in the case of the accused:

SUSUKI MOTOSUKE,
aged 27, born and living in Yamagata-Ken,
Yonesawa-Shi, Alamachi Tsoedjinishi no 3592;
1st Lieutenant, Engineer Corps, Imperial
Japanese Army, posted to the HOSIKIKAN
(Intelligence).

The Temporary Court-martial aforesaid;

In view of the order dated 30th November 1947 issued by the Prosecutor of the Temporary Court-martial, committing the case for trial by the Temporary Court-martial, in which order as amended at the sitting the accused is charged by the Prosecutor:

that he, on dates which cannot now be exactly established but falling within the period August 1944 ~~and~~ December 1944, therefore in time of war, in Riring and Owen Pantai, at anyrate in the South Moluccas district, as a subject of the enemy power Japan, in and during his function of 1st Lieutenant in the Japanese Intelligence Service, the "Hosikikan", committed war crimes, having, contrary to the laws and customs of war, intentionally, by abuse of the authority he enjoyed over his subordinates by reason of the above function, incited the latter so that they,

- a. about August 1944, in Riring, by means of rifle fire, killed Barends, accused among other things of armed resistance against the Japanese, Yamamoto;
- b. about November 1944, in Owen Pantai, by means of rifle fire, killed Tarumasele, teacher at Karlutu, accused among other things of setting ambushes in the path of the retreating Japanese; Mailoa, teacher at Latoa, accused of shooting at and/or robbing the Japanese; Skalwik, of Karlutu, accused of stealing a rifle from the Japanese;

while he, the accused, knew that the persons mentioned in a and b had not been tried, at anyrate in a legal manner;

the which is specified and made punishable in art. 1, Definition of War Crimes Decree, Statute Book 1946 no. 44, in conjunction with art. 4, War Crimes Penal Law Decree, Statute Book no. 45.

In view of the summons and writ whereby the accused is called upon to appear at 8 a.m. on Saturday, 13th December 1947, at the sitting of the Temporary Court-martial holding session in the Court-martial building in Batocgadjah (Amboina).

In view of the documents of the preliminary investigation;
Having heard the accused and witnesses;
Having heard the sentence demanded by the Prosecutor, and in view of the written demand read out by him and then handed over to the Court-martial, to the effect that the Court-martial declare the accused guilty of:

the war crime of; Murder, committed four times,
and shall therefore sentence him to the death penalty.

Considering that at the sitting the accused has denied having been guilty of the charge, but has admitted:
that as a subject of Japan, and in the function and at the times and places mentioned in the indictment, he gave his subordinates orders to execute by shooting the persons mentioned in the indictment, namely Barends, Tarumasele,

Mailoa and Skalwik, who were accused as specified in the indictment, which orders were carried out by the afore-mentioned subordinates;

Considering that the following witness, sworn at the sitting, has in substance declared:

Robert LATUMAHINA:

that he was one of the four "Gunkes" (volunteers serving with the Japanese army) who, in Riring at the end of August or beginning of September 1944, were ordered by the accused to execute Barends, head of the Gunkes, by means of rifle fire, he, Barends, as witness learnt, having shot at a Japanese called Yamamoto; that accused himself gave the order to fire; that Barends was hit and hung limply on the post to which he had previously been bound, whereupon the accused from near-by shot at him once more; that Barends was certainly then dead and after this was put into a grave which was then filled in; that Skalwik and Tarumasele were arrested in the middle of September 1944 by accused's orders and taken to Owen Pantai; that witness was present at Skalwik's arrest; that a week later, therefore still in September 1944, the teacher Mailoa was arrested and taken to Owen Pantai; that about ten days after this, therefore in the beginning of October 1944, between 3 and 4 p.m. witness saw these men being taken away by a number of Japanese, accused being in charge; that towards 5 o'clock the Japanese in question returned without the said Indonesians; that he had previously seen the latter being interrogated by the accused and Yamamoto;

and that it has been legally established by the statement made out by the Deputy-Prosecutor of the Temporary Court-martial in Amboina, Dr. W.J. van der Veen, which was read out and shown to the accused during the sitting, that in the preliminary investigation the following person declared in substance on oath:

OET FERDINANDUS:

that in October 1944 the teachers Tarumasele and Mailoa, and the Menadonesian soldier Skalwik, were taken to a spot in the woods by SUSUKI, Yamamoto, Niko, Seiki and others belonging to the "Hosikikan" office and that they did not return from there, so that he supposes they were murdered; that the accused was the commandant of the execution squad;

Considering that the Court, from what has been considered above, deems proved that the accused, in his function of 1st Lieutenant of the "Hosikikan":

- a. about August 1944, near Riring on the island of Ceram, ordered a number of Indonesians under his command to kill by rifle fire Barends, who was the head of a group of Gunkes and who had committed a punishable offense, which order was carried out by the said subordinates;
- b. about November 1944, near Owen Pantai on the island of Ceram, ordered a number of Japanese under his command to kill by rifle fire Tarumasele, Mailoa and Skalwik who had committed punishable offences, which order was carried out by the said subordinates;

Considering that the accused has denied the unlawfulness of both acts specified under a and b, while furthermore Counsel, in his speech for the defence, has advanced that apart from the fact that the order for Barends's execution occurred in a lawful way, his execution in connection with the fact that he was a Gunke, that is to say, that he had voluntarily joined up for Japanese military service, was purely a matter for the Japanese army itself and so does not come under the term "war crime";

Considering by this that the said Counsel's intention - even if not expressed - was to dispute the authority of the Court to deal with the "Barends's" case, for which reason the question of the Court's Competency must first be gone into:

Considering that from elsewhere the Court is acquainted with the fact that Gunkes volunteered freely to join the Japanese army, wherefore it is now established that Barends, having previously joined up in the Netherlands Indies for Japanese, therefore foreign, military service without the permission of those who were carrying on the general administration there in the Queen's name, was not a Netherlands subject at the time of his execution and therefore no longer

a subject of the United Nations;

Considering that, as appears from the "Explanation of the Legislation drafted with regard to War Crimes" (supplement to Neth. Indies Statute Book no. 15031), section 2, subdivision 6, it was the intention of the United Nations Commission for the Investigation of War Crimes to undertake the investigation of war crimes committed against subjects of the United Nations, to take the lead, and to collect data, and Barends being voluntarily in the Japanese army it can hardly be accepted that the act committed against him was contrary to the laws and customs of war so that here there can be no talk of a war crime;

Considering that it must now be gone into whether the act committed against Barends constituted a crime and, if so, whether the Court is competent to deal with it;

Considering that the accused bases his denial of the unlawfulness of the well proved act specified under a on article 22 of the Japanese Military Penal Code, stating; ^{other} that the said Barends was among things guilty of actual insubordination, accompanied by the use of weapons, in the face of the enemy, the penalty for which among other things is death, this by virtue of article 62 of the said Penal Code, while the afore-mentioned article 22 regulates the summary justice which, as head of an army unit, the accused was authorised to put into effect in order to maintain discipline;

Considering that accused's appeal to article 62 can be rejected at once, the application of this article being reserved to the Judiciary;

Considering that article 22 of the same Japanese Penal Code deals, among other things, with the non-liability to punishment of "unavoidable acts carried out in cases of necessity for the maintenance of discipline among army units face to face with the enemy";

Considering that the accused's order to execute Barends cannot be considered as an unavoidable act, and the army unit to which Barends belonged, namely the "Hosikikan" unit commanded by the accused, was never once during the whole war face to face with the enemy, it being very well known that no Allied landings ever took place on the island of Ceram in war-time, which disposes of any grounds for exclusion from punishment the accused may appeal to, and the well proved act mentioned under a above must be considered as having been committed contrary to law and that it constitutes the crime, "intentional incitement to murder by abuse of authority";

Considering that the accused has also denied the unlawfulness of the well proved act specified under b above, stating that he acted on the orders of his chief, Lt. Col. Hirunaga, in virtue of a sentence passed by the Gunritsu Kaigi (Japanese court-martial);

Tammesele
Case

Considering that the afore-mentioned Robert Latumuhina has stated that Skalvik and Tammesele were arrested in the middle of September 1944 and the teacher Mailoa a week later; that about ten days after this, therefore in the beginning of October 1944, he saw these three persons being taken away between 3 and 4 p.m. by a number of Japanese who returned about 5 o'clock without the aforesaid Indonesians; and from the afore-mentioned statement by Oei Ferdinandus it has been established in law that the ~~person~~ person just mentioned stated during the preliminary investigation that Skalvik, Tammesele and Mailoa were executed in October 1944; by which it has been legally and convincingly proved that the act specified under b took place in October 1944;

Considering that the witness à décharge, Nakamura Isami, sworn at the sitting, has stated: that from the beginning of October 1944 till the capitulation he carried out the function of Prosecutor of the Gunritsu Kaigi (court-martial) in Piroe and Moerikaoe; that in this function he heard from his chief, Lt. Col. Shimizu, that a case of violence against the Japanese had occurred in Owen Pantai, and that Shimizu had drawn up the documents in the case after Lt. Col. Hirunaga had passed the matter on to him, but that he does not know whether this case was brought before the Gunritsu Kaigi; from which the Court gathers that the act specified under b took place without

sentence being passed by any competent judge and, therefore, contrary to the law and customs of war, for which reason the accused, having committed that act, ought also to be declared guilty of the war crime to be further qualified in the dictum;

Considering that in virtue of article 1 of the War Crimes Penal Law Decree in conjunction with article 65, ~~para~~ para. 1 of the Netherlands Indies Penal Code, there is only one punishment which should be given for the acts committed by the accused;

Considering that the acts committed by the accused are of a serious nature and resulted in the death of four persons, but that on the other hand account must be taken of his comparative youth as well as of his very responsible function as Commandant of a small isolated army unit placed in the middle of a hostile population, for which reason the Court considers the punishment to be named further in the dictum as in every respect justifiable;

In view of articles 55, para. 1, sub-section 2, 65 and 340 of the Penal Code, article 1 of the "Definition of War Crimes Decree", and articles 1, 4, 6 and 9 of the "War Crimes Penal Law Decree";

ADMINISTERING THE LAW :

Declares the accused named at the head of this:

SUSUKI MOTOSUKE,

guilty of:

1. the crime of "Intentional incitement to murder by abuse of authority";
2. the war crime of "Murder";

Sentences him on that account to imprisonment for life;

Maintains the arrest.

Sentence passed this day, Wednesday, 28th January 1948, by us:

Major Dr. F.P. Stöcker, Inf. Res.
Capt. C.M. Schuddebeurs, Inf. }
Capt. Dr. H.P.J.M. van Loon, Inf. Res. }

President
Members

in the presence of:
1st. Lt. Dr. Th. L. Doornweerd, Inf. Res.

Secretary.

Noted by me,
the Secretary:
s/ Dr. Th. L. Doornweerd.

The President:
s/ Dr. F.P. Stöcker
s/ C.M. Schuddebeurs,
1st Member:
s/ Dr. H.P.J.M. van Loon,
2nd Member.

FIAT OF EXECUTION:

Fiat of execution of the above sentence granted this day, Friday, 13th February 1948, by me, the Resident of Amboina.

The Resident:
s/ P.M. Vissers.